courts do not agree as to the question under what circumstances the depositor may be considered to be in fault so as to relieve the bank from liability. Negligence of a depositor, unless the direct and proximate cause of the payment of a check bearing the forged indorsement of a payee, would not relieve the bank from liability to the depositor therefor. *Jordan Marsh Co.* v. *National Shawmut Bank,* 201 Mass. 397. In the following cases the bank was held liable although the payment of the forged check was partly due to the negligence of the depositor. *Mackintosh* v. *Eliot Nat. Bank,* 123 Mass. 393; *Welsh* v. *German-American Bank,* 73 N. Y. 424, 29 Am. Rep. 175; *Harlem Co-Operative Building & Loan Ass'n.* v. *Mercantile Trust Co.* (Com. Pl.) 10 Misc. 680, 31 N. Y. Supp. 790; *National Bank of Va.* v. *Nolting,* 94 Va. 263, 26 S. E. 826. The authorities agree that the bank is bound to see that the payee's signature is genuine. The mere fact that a check is placed in the hands of a wrong person does not relieve the bank of its duty to ascertain the payee's signature. Unless the negligent act of the depositor is of such a nature that it causes the bank to take a forged indorsement for a genuine one, it cannot be said to be the direct and proximate cause of the payment of a forged instrument. But the court in the principal case, ignoring the general rule, gave judgment in favor of the bank on the ground that, "where one of two innocent parties must suffer because of a fraud or forgery, justice imposes the burden upon him who is first at fault and put in operation the power which resulted in the fraud or forgery." However, the court expressly stated that it rested its decision on the peculiar facts of the case. This limitation is important, because the rule invoked by the court to decide the case under discussion can be abused very easily, as some fault on the part of the depositor can generally be found in the case of payment of a forged instrument by the bank, and if it should be allowed to govern the cases of forged checks without any limitation, it would practically take away the protection which the law has now given to depositors, and banks would become less diligent in ascertaining the payee's signature.

CANCELLATION OF INSTRUMENT FOR WANT OF CONSIDERATION—STATUS QUO. —Plaintiff purchased from one of the defendants, Dr. Wo, a restaurant with a lease of the premises. Wo was only a sub-lessee and agreed to have the lease assigned to the plaintiff if the plaintiff would advance $600, the rent due for the balance of the term. Plaintiff so agreed to do and signed the notes for $600. After signing the notes, the owner of the premises and the first lessee refused to assign the lease, and plaintiff resold the restaurant. Being sued on the notes, plaintiff brings action to have the sale rescinded and the notes cancelled. *Held,* that the notes were void, and that their collection should be enjoined, notwithstanding the fact that because of the resale of the restaurant by the plaintiff, the defendant could not be placed in *statu quo. Johnson* v. *Parshley et al.* (Ore. 1911) 117 Pac. 661.

The rule that one seeking to rescind a contract must put or offer to put the other party in *statu quo,* is generally recognized and followed by courts of equity. *Armstrong* v. *Pierson,* 5 Iowa 317; *Lane* v. *Latimer,* 41 Ga. 171. A great many courts have laid down exceptions to this general rule, especial-

ly in cases of fraud and mistake where it has been found impossible to so restore the parties to their original position, and where injustice would result were the court to refuse to act. *Freeman* v. *Reagan*, 26 Ark. 373; *Colson* v. *Smith*, 9 Ind. 8; *Paquin* v. *Milliken*, 163 Mo. 79. In the last mentioned case, which, like the principal case, was brought to cancel notes, the court said, "The general rule is that a court of equity in decreeing the cancellation of a contract must set aside the contract *in toto* or not at all, and will deny it where the parties cannot be substantially placed in *statu quo*, but it is also held that the fact that the *status quo* cannot be restored will not prevent a rescission where such condition results from the fraud of the defendant, and without the fault of the plaintiff." In the principal case, the defendant set up two reasons why the notes should not be cancelled, first, that by reason of plaintiff's resale of the property, the defendants could not be placed in *statu quo*, and second, that a partial rescission of an entire contract cannot be had. Both these defences were lightly overruled however, the court merely stating that there had been a total failure of consideration for the notes, apparently not deeming it necessary to cite any authority whatever, and evidently ignoring any merit in these defences which have been so successfully pleaded in many similar cases. The method of arriving at the decision illustrates the tendency of modern equity courts to relieve the individual parties and to do justice, even at the cost of established equitable doctrines.

CHARITIES—CHARITABLE GIFT—VALIDITY.—Testator bequeathed fifty thousand dollars to and for a hospital building and home for poor widows and orphan children to be built in the city and county of Boulder, Colorado; provided the city, by its officers, or the County Commissioners and their successors, would support the same; otherwise to certain designated legatees. *Held*, the bequest was void since equity had no jurisdiction to enforce it by appointing a trustee. *Robbins et al.* (*Ewing, Intervener*) v. *Hoover et al.* (Colo. 1911) 115 Pac. 526.

Indefiniteness of beneficiaries was not fatal to the attempted gift. Such is often unavoidable from the nature of the benefited class which is usually a changing and fluctuating one. Even bequests to the poor are valid. *Hunt* v. *Fowler*, 121 Ill. 269, 12 N. E. 331 and cases there cited. After acknowledging this, the court said, "yet, where there is an entire absence of trustees and no details or plans for carrying out the testator's object, and no method prescribed for executing the trust and no delegation of power to anyone to select the particular beneficiaries" the same cannot be enforced; citing PERRY, TRUSTS, Ed. 5, §§ 722, 729, 731. The *cy pres* doctrine followed by Massachusetts and other states and the broad English chancery doctrine of enforcement of trusts under the King's prerogative as *parens patriae* was definitely repudiated. *Jackson* v. *Phillips*, 14 Allen, 539. The position of the court is sustained by *Grimes' Executors* v. *Harmon*, 35 Ind. 198. There the court held it could not supply a trustee to enforce a charitable use where one was in no way indicated by the donor. This would be the law in such states as require as great a certainty in charitable as in private trusts. EATON, EQUITY, p. 395. This view differs widely from the practice in Massachusetts and a great many